

Statement in Opposition to HB 5582 – December 16, 2014

Submitted by Bruce A. Timmons

HB 5582, as passed by the House without amendment, would eliminate one of 3 optional dispositions for young offenders – now between age 17 and age 21, proposed to go up to age 24 under HB 4206 – under the Holmes Youthful Trainee Act (HYTA): Commitment to the Michigan Department of Corrections (MDOC) for up to 3 years.

Currently the court has 3 options under MCL 762.13(1):

(b) Place the individual on probation for not more than 3 years subject to probation conditions as provided in section 3 of chapter XI. ... (including drug court). This option may be straight probation with conditions or may include up to 1 year in jail. This is the most common referral.

(c) Commit the individual to the county jail for not more than 1 year. This option if used does not include probation or supervision after release. The court may allow work or school release.

(a) Commit the individual to the department of corrections for custodial supervision and training for not more than 3 years in an institutional facility designated by the department for that purpose. This option if used does not include probation, parole, or supervision after release.

Committal to MDOC “for custodial supervision and training” under HYTA has ebbed and flowed over the nearly 50 years that HYTA has existed. About 45 years ago that prison option was challenged and thrown out by a circuit judge, only to have that decision reversed on appeal. The numbers provided by MDOC, separately reported from prisoner counts, typically ranged from under 10 to the 20’s or 30’s, up and down in cycles, for many years.

Recently the number of HYTA trainees sent to MDOC has escalated noticeably. MDOC had over 300 trainees in the Thumb Correctional Facility when HB 5582 was introduced last Spring. MDOC provided me with a chart (that I have forwarded to committee policy staff) that shows the predominant source of trainees is Wayne County, followed by Macomb, Oakland, and Ingham Counties. Partial year 2013 data put those commitments at 259, 59, 29, and 23 respectively (out of a total of 404). The prison option is not otherwise widely used, but the other 34 HYTA trainees sent to prison came from 12 other counties.

While MDOC’s focus and concern are about Wayne County, there are 15 other counties with cases where the court concluded that the offense was sufficiently serious that the trainee deserved consequences beyond jail or probation, yet felt the individual was a good prospect not to repeat as an offender.

Remember that the objective of HYTA is to result in no criminal conviction – no criminal record so that individuals may move on with their lives, to get a job, credit, or housing without the impairment of an adverse criminal background check. That is clearly the motivation behind HB 4206 that the Judiciary Committee reported out last week.

MDOC is concerned about raw numbers at the Thumb – and that is a legitimate issue. It has concerns about multiple HYTA orders for some trainees – also a legitimate issue. It has speculated as to why – such as putting cost on the state instead of county (jail). But MDOC has apparently made no effort to discuss its concerns with Wayne County stakeholders or inquire as to why Wayne and other counties use the HYTA prison option (for facts, not speculation).

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Over the 45 years I served as staff for the Legislature, there were times legislation seemed to be generated in lieu of direct communications between two or more stakeholders that might have been avoided if those affected simply talked to each other about respective interests and concerns – and in some cases, mutual objectives: Like not having older HYTA trainees mixed with younger HYTA trainees – an observation registered by an assistant prosecutor, not MDOC. There may be other ways to accommodate MDOC concerns without legislation, but MDOC wants a statute regardless of its impact on stakeholders or the trainees who are affected.

It seems to be the assumption within MDOC that elimination of the prison option will result in commitments to the county jail instead. That might happen to some degree, but there are countervailing considerations that suggest unintended consequences – for trainees, courts, counties, and MDOC as well.

Courts and prosecutors thought those 400-some trainees on the 2013 chart deserved a consequence beyond what a jail stay would provide. The more likely outcome may be commitment to prison – anyway – with a criminal record as the outcome and a barrier to overcome when later seeking employment, housing, or credit. That is a result just the opposite of why HYTA was enacted and why HB 4206 wants to extend its reach.

Moreover, please remember that prisons provide better programming and training possibilities than do jails. Jails were always intended for short-term commitments, originally for no more than 6 months. (The period was later extended to 1 year but not so long ago.)

In Wayne County it is my understanding that HYTA trainees sent to prison receive an 18-month committal, with court review every 6 months. Commitment to jail for up to 1 year does not come with a review, although the statute does allow the court to permit work release or release for educational purposes. However, those who are subject to the HYTA prison option are not likely to be good candidates for a work or school release; otherwise that local jail option would have been the disposition instead. Note that during the same period in 2013 when 259 HYTA trainees from Wayne County were sent to prison, 1,961 HYTA trainees were placed on probation in Wayne County.

For those reasons, I would encourage the Judiciary Committee to explore the issue further with the involvement of other stakeholders and to address the issue early next Session.

By the way, there is a drafting error. The revised citation on page 2, line 7, is incorrect. The end section of RJA Chap 10A is 600.1084. MCL 1099A is the last section in RJA Chap 10B.

Respectfully,

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